



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Molly Joseph Ward
Secretary of Natural Resources



David K. Paylor
Director

Maria R. Nold
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO Delmarva Power & Light Company Unpermitted

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Delmarva Power & Light Company, for the purpose of resolving certain violations of State Water Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Delmarva" means Delmarva Power & Light Company, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Delmarva is a "person" within the meaning of Va. Code § 62.1-44.3.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

6. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
7. "Regulations" means the Virginia Water Protection Permit Program Regulations, 9 VAC 25-210 *et seq.*
8. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code. Article 2.2 (Va. Code §§ 62.1-44.15:20 through 62.1-44.15:23) of the State Water Control Law addresses the Virginia Water Resources and Wetlands Protection Program.
9. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3 and 9 VAC 25-210-10.
10. "Surface water" means all state waters that are not ground waters as defined in Va. Code § 62.1-255.
11. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 9 VAC 25-210-10.

SECTION C: Findings of Fact and Conclusions of Law

1. Delmarva owns a 150-foot Right-of-Way ("ROW") for electrical transmission lines beginning at the Maryland/Virginia state line for six miles to the substation located in Wattsville, Virginia.
2. On November 13, 2014, the Army Corps of Engineers ("USACE") notified DEQ of potential wetland impacts in the Delmarva ROW.
3. On December 22, 2014, Delmarva submitted a Joint Permit Application ("JPA") that indicated that a contractor of Delmarva had removed vegetation from the ROW and:
 - converted 3.174 acres of non-tidal forested wetlands to non-tidal scrub-shrub wetlands;
 - converted 2.466 acres of non-tidal forested wetlands to non-tidal emergent wetlands; and

- filled 2.78 acres of non-tidal scrub-shrub and 2.46 acres of non-tidal emergent wetlands with mulch from the vegetation removal.
4. Va. Code § 62.1-44.15:20 and the Regulations at 9 VAC 25-210-50 prohibit the excavation, filling or dumping, or new activities to cause draining or that otherwise significantly alters or degrades existing wetland acreage and function except in compliance with a permit. Delmarva does not have a Permit for the above activities.
 5. On February 3, 2015, DEQ issued Delmarva a NOV for the violation of Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50.
 6. On February 20, 2015, Department staff met with representatives of Delmarva to discuss the NOV. During the meeting, Delmarva indicated most of the mulch described in C(3) of the Order had been removed.
 7. Based on the documentation submitted by Delmarva on December 22, 2014 and February 23, 2015 meeting, the Board concludes that Delmarva has violated Va. Code § 62.1-44.15:20 and 9 VAC 25-210-50 of the Regulations, as described in paragraphs C(3) and C(4), above.
 8. On October 19, 2015, USACE staff reported that based upon USACE site inspection, the mulch described in C(3) of the Order had been removed and the wetland area had been restored.
 9. Delmarva has submitted documentation that verifies that the violations described in paragraphs C(3) and C(4), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Delmarva, and Delmarva agrees to pay a civil charge of \$32,500.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Delmarva shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Delmarva shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Delmarva for good cause shown by Delmarva, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated February 3, 2015. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Delmarva admits the jurisdictional allegations, and agrees not to contest, but does not admit the, findings of fact, and conclusions of law contained herein.
4. Delmarva consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Delmarva declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Delmarva to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Delmarva shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Delmarva shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Delmarva shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;

- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Delmarva intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Delmarva. Nevertheless, Delmarva agrees to be bound by any compliance date which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Delmarva has completed all of the requirements of the Order;
 - b. Delmarva petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Delmarva.

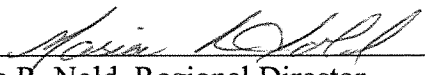
Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Delmarva from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. Any plans, reports, schedules or specifications attached hereto or submitted by Delmarva and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
- 13. The undersigned representative of Delmarva certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Delmarva to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Delmarva.

14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, Delmarva voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19 day of May, 2016.



Maria R. Nold, Regional Director
Department of Environmental Quality

Delmarva Power & Light Company voluntarily agrees to the issuance of this Order.

Date: 03/08/16 By: Susan H Power, Deputy General Counsel
(Person) (Title)
Delmarva Power and Light Company

~~Commonwealth of Virginia~~
~~City/County of~~ District of Columbia

The foregoing document was signed and acknowledged before me this 8th day of March,
2016, by Susan Power who is
Deputy General Counsel of Delmarva Power & Light Company, on behalf of the company.

Dorothy M. Bonds
Notary Public

N/A
Registration No.

My commission expires: 10/14/2016

Notary seal:

